REMARKS

The Amendments

The claims are amended to put them in a form more customary to US practice, including rewriting the "use" claims as new method claims and removing improperly multiply dependent claims. The amendments do not narrow the broadest scope of the claims. Claims 1-25 and 29-36 are pending herein.

To the extent that the amendments avoid the prior art or for other reasons related to patentability, competitors are warned that the amendments are not intended to and do not limit the scope of equivalents which may be asserted on subject matter outside the literal scope of any patented claims but not anticipated or rendered obvious by the prior art or otherwise unpatentable to applicants. Applicants reserve the right to file one or more continuing and/or divisional applications directed to any subject matter disclosed in the application which has been canceled by any of the above amendments.

The Restriction Requirement

Pursuant to the Restriction requirement set forth therein, Applicants hereby elect Group 1), claims 1-25, drawn to a single pharmaceutical composition in which the anticholinergic and the TACE inhibitor are both present. The election is made with traverse for the reasons set forth below. Applicants reserve the right to file one or more divisional applications directed to the non-elected subject matter.

The requirement for restriction between Groups 1) and 2) is traversed on the grounds that

the examination of the groups of invention indicated in the Office Action together would not amount to a serious burden upon the PTO. A composition comprising the components together or separately for use together would appear to be amenable to a contiguous search. Thus, no burden is seen to search both forms. In the absence of a serious burden of examination, restriction is not proper. See M.P.E.P. §803. Thus, the requirement should be withdrawn.

Regarding Groups 3), 4) and 5), the "use" claims subject to this restriction have been replaced with method of use claims. The Office Action indicates that, in this case, further analysis on these claims will be provided and applicants respectfully request such. Applicants respectfully submit that, even if it is determined that these method claims should be restricted from Groups 1) and/or 2), that it should be indicated that such method claims are subject to rejoinder. These claims would be in accordance with the practice following In re Ochiai, 37 USPQ2d 1127 (Fed. Cir. 1995).

The Election of Species Requirement

Pursuant to the Election of Species requirement in the Office Action, applicants hereby elect the species of a composition comprising tiotropium as the anticholinergic and a compound of the formula 2a as the TACE inhibitor. It is submitted that the formula 2a is adequately specific even though it encompasses more than one compound because it defines a very narrow group of compounds having the same core structure. If a more specific selection is necessary, applicants elect the compound of formula 2a where R^1 is OH and R^2 is iso-butyl. It is believed that, of the claims elected pursuant to the restriction requirement, claims 1-3, 5 and 12-25 encompass the elected species. The Examiner is encouraged to examine the broadest possible scope of invention indicated by the elected species. In accordance with M.P.E.P. §803.02 (and

as noted in the Office Action), should no prior art be found which renders the invention of the elected species unpatentable, the search of the remainder of the generic claim(s) should be continued in the same application. It is improper for the PTO to refuse to examine in one application the entire scope of the claims therein unless they lack unity of invention. The generic claims herein have not been alleged to lack unity of invention.

Favorable action is earnestly solicited.

Respectfully submitted,

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